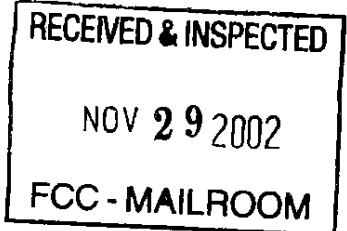


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November 27, 2002

SENT BY FEDERAL EXPRESS

Marlene H. Dortch, Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Opposition of New Ulm Broadcasting
Company to Linda Crawford "Motion for Leave
to File Response" and "**Response**" in
MB Docket No. 02-248, Smiley, Texas,
Directed to Ass't Chief, Media Bureau

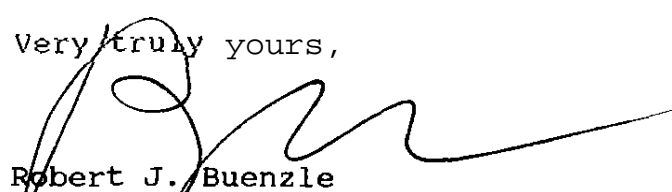
Dear Ms. Dortch:

Transmitted herewith is an original and four copies of the above-captioned Opposition of New Ulm Broadcasting Company, as directed to John A. Karousos, Assistant Chief, Audio Division, Office of Broadcast License Policy, of the Media Bureau.

It is requested that the additional copy of the filing marked "FILE" be date-stamped and returned to us in the enclosed self-addressed stamped envelope.

Should any additional information be required, please contact this office.

Very truly yours,


Robert J. Buenzle
Counsel for New Ulm
Broadcasting Company

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Before The
FEDERAL COMMUNICATIONS COMMISSION

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NOV 29 2002

FCC - MAILROOM

In the Matter of) MB Docket No. 02-248
)
Amendment of Section 73.202(b)) RM-10537
Table of Allotments)
FM Broadcast Stations)
Smiley, Texas)

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

OPPOSITION TO LINDA CRAWFORD "RESPONSE"

On August 30, 2002, the Commission issued its Notice of Proposed Rulemaking in this proceeding (DA 02-2061) providing a date at that time for Comments and Counterproposals (October 21, 2002) and for Reply Comments (November 5, 2002). In response to those dates, Comments were filed by Linda Crawford (hereinafter "Crawford"), and Comments and Counterproposals were filed by New Ulm Broadcasting Company (hereinafter "New Ulm") and LBR Enterprises (hereinafter "LBR"). On the Reply Comment date, Reply Comments were filed by those parties and also by Elgin FM Limited Partnership (hereinafter "Elgin"), licensee of radio station KKLB(FM) in Elgin, Texas. Consistent with the terms of the NPR, that should have completed the pleading cycle. Unfortunately, it did not. Crawford determined that it had more to say and proceeded to file a "Response" pleading along with an accompanying "Motion for leave to File Response". New Ulm's instant opposition is directed to Crawford's extra pleadings.

I. Crawford Should Have Raised Her Arguments in Reply and Her Motion For Leave to File an Extra "Response" is Devoid of Substance and Should be Denied

As far as the Crawford Motion and "Response" is directed toward New Ulm ^{1/} it seeks to attack on three points: that the conflict caused by the Elgin application one business day prior to the New Ulm filing should be fatal, that the error in the KYKM consent form that did not include a specific mention of the change in transmitter site should be fatal, and that the 'real' licensee of KYKM might not really be LaGrange Broadcasting Company and that should also be fatal. In short everything should be fatal, and the proposal to add a first transmission AND first radio reception service to the town of Schulenburg, a town of 2,699 persons, all unserved "white area", should be rejected in favor of adding some further service to Smiley which claims a population of 453 persons, whose 'town center' is a dusty crossroads with about the same number of buildings as ars (three). The fact that Crawford would claim some right to file this "response" and make these arguments is itself truly extraordinary.

As to the first item (the conflicting last-minute filing by Elgin), it is clear from Crawford's Reply Comments that she was

^{1/} Crawford also takes the occasion to launch further attacks upon LBR and we leave it to LBR to point **out** the defects **in** those 'further arguments' as directed at LBR. Crawford seeks to use the temporary conflict in site coordinates resulting from Elgin's application filed one business day before the comment date in this case (and easily cured by a slight change in site coordinates by New Ulm in its Reply Comments) to seek to "**disqualify**" New Ulm and Crawford does not attack Elgin in her Response.

fully aware of the Elgin filing and its conflict with the original New Ulm site coordinates for Schulenburg and her position is that the Elgin filing was some kind of "poison pill" which by reason of simply "being", automatically destroyed New Ulm's proposal to bring a new white-area service first service to the town of Schulenburg. She could have argued then that, despite the fact that the conflict could be easily and predictably resolved by New Ulm simply making a slight move of its site, that such a conflict, could never be allowed, as she apparently argues now in her extra "response". She chose not to make that argument then and should not be allowed to add it, specious as it is, now.

Similarly, New Ulm included copies of all its Consent forms in its Counterproposal (Exhibit 3) and Crawford could have voiced her complaint as to any aspect of the KYKM form in her Reply Comments. She did not and she has no extra "right" to add a new complaint in response to New Ulm's own recognition and correction in its Reply of the editorial error found in the KYKM form.

Finally, as to Crawford's lack of any "right" to file additional pleadings, New Ulm was very direct in its Counterproposal as to who the licensee of KYKM was. It indicated correctly that the licensee is LaGrange Broadcasting Corporation, which has been the licensee since it closed on purchase of the station by letter to the FCC April 12, 2000. The fact that there may be an error in the FCC's data base which failed to recognize that fact does not change what is an indisputable fact. In any event, if Crawford had a legitimate concern with that statement

which was included in the Counterproposal, it was up to Crawford to make whatever argument she saw fit at the proper time, in her Reply Comments. She did not and she has no right to try to raise it now.

Lastly, we just cannot close this section without noting that it is Crawford, and not anyone else, that larded her Reply Comments with page after page of new facts relating to a matter which should have been addressed with legal sufficiency in her own original Petition but was not. Specifically, Crawford came nowhere close to the legal threshold required (see Pleasant Dale, Nebraska, 14 FCC Rcd 18893 (1999)) to establish any alleged "community" as a true Community recognizable as such under FCC Rules. As Noted in Pleasant Dale, the Commission held as critical deficiencies, the petitioner's failure to provide information as to municipal services provided to the residents, the names and addresses of businesses which it states exist, the names or addresses of social and civic organizations, libraries or other governmental services located within the community, and information as to the businesses which it says exist to demonstrate that they are intended to serve the needs of [the alleged city] as opposed to other areas. At least in Pleasant Dale, the petitioner listed some local businesses. The word "business" was not even mentioned in the Crawford petition so their "**relationship**" to the community could hardly have been addressed. Of course, it was not. This flaw by itself was deemed a fatal omission in Pleasant Dale. The other flaws and omissions in Crawford's petition are in addition to that.

New Ulm pointed these glaring omissions out in its Comments, and, in response Crawford filed a huge Reply Comment, devoting over five pages of text and dozens of pages of exhibits to its untimely attempt to establish Smiley as a **"community"**, something it should have done in its Petition. New Ulm did not seek to file an extra "response" to point out this load of new facts offered by Crawford in Reply, and left it to the Commission to deal with the propriety of that. Nor did any other party seek to file an additional "Response" to note the new material filed by Crawford in Reply. It is simply amazing that Crawford, the party that loaded the record with new supplemental facts in Reply to try to repair the deficiencies in her own Petition, would be so "audacious" as to seek to file an additional **"Response"** pleading against New Ulm and LBR. Her request should be denied.

II. There Is No Substantive Merit To Crawford's Arguments.

Unfortunately, as always happens in cases such as this, the parties to whom the attack of the "extra pleading" is directed are constrained to respond in some respect to the pleading as filed and we shall do so here, only to the extent that the matters go beyond what has already been referenced in the previous section of this pleading.

1. The Elgin Conflict

As mentioned earlier, Elgin filed an application **for** a site change for KKLb on Friday, October 18, 2002, a matter which New Ulm could not possibly have known when it filed its

Counterproposal on Monday, October 21, 2002. It is nice that Crawford, at page 2 of her pleading recognizes that to be a statement that is "factually correct". Crawford goes on however to pretty much take the position that that is just too bad and that New Ulm should not be allowed to amend its site to remove the conflict. That is simply absurd, a matter apparently clear even to Elgin which states on page 2 of its own Reply Comments:

While New Ulm may be able to amend its Counterproposal, it must take into consideration, and specify a site, that is fully-spaced to the site specified in the CP Application.

That could be easily done, and that is precisely what was done by New Ulm in its Reply Comments. The site conflict raised by the Elgin application was recognized and resolved. No other change in any other part of the allocation plan was either necessary or proposed. Such a response to such an unforeseen conflict was not only logical and reasonable but consistent with prior FCC recognition and resolution of similar conflicts (see for example Petitions for Rulemaking Filed, Public Notice Report No. 2487, June 1, 2001, where the Commission noted that a counterproposal was short-spaced to a pending application [that had, in fact, been on file for over a years time] and gave the Counterproponent 15 days to amend to resolve the conflict). Crawford's unique "poison pill", **"gotcha"** approach is contrary to logic, reason, the public interest, and FCC policy and must be rejected.

2. The KYKM Aareement to Change Freauency and Site Location.

In its Counterproposal New Ulm included several Consent forms for stations affected by the proposal and the changes set forth therein. Among the consents was one from the licensee of KYKM which specifically agreed to "the modification of its license for that facility as being proposed by New Ulm Broadcasting in its Counterproposal being filed in [docket 02-248]..." The Counterproposal as filed was very specific in its proposal that the channel of KYKM would be changed and at a new transmitter site.

In addition, it is also noted that the 100% owner of LaGrange Broadcasting Corporation, licensee of KYKM, is Roy E. Henderson who is also the 100% owner of New Ulm Broadcasting 2/ and who was obviously fully aware of the terms of the proposal and in full agreement with them, including the change in channel and transmitter location for KYKM. Nonetheless, in an editorial error in preparing the KYKM consent form, it did not include a specific reference to the new transmitter site for KYKM. Recognizing this, and seeking to clarify the record and remove any possible confusion on the point, New Ulm had the consent form corrected and re-executed to include the specific reference to the change of transmitter site site, and submitted the corrected form with its Reply Comments.

2/ This common ownership was also a fact apparently already well known and recognized by Crawford. See the first line of page 3 of the Crawford Reply Comments relative to New Ulm and paragraph 4 of the Crawford "Response" relative to LaGrange.

The proposed change of channel and transmitter location for KYKM was obvious and clearly stated in the New Ulm Counterproposal and the consent form, while fully agreeing to the terms of that counterproposal as filed, was also available for inspection by Crawford at that time to argue any alleged inconsistencies, but it did not. It is preposterous for Crawford to try to argue now that the company owned by Henderson would not be in full and total agreement with the counterproposal also filed by a company owned by Henderson. There simply cannot be any legitimate question as to the KYKM licensee's full and complete agreement to the modifications proposed for KYKM in the counterproposal and Crawford's tardy complaint on this matter is utterly without merit.

3. LaGrange Broadcastina Corporation is the Licensee of KYKM

In perhaps the strangest stretch of argument not only in this pleading but in just about any pleading, Crawford suggests that since the FCC database reflects a different licensee name for KYKM, then that must be the fact, simple as that. One must wonder if Crawford has never before experienced a substantial error in the FCC database. The indisputable facts of the matter are that the sale of KYKM (and several other stations) to LaGrange Broadcasting Corporation was approved by the FCC by grant April 7, 2000; included in Public Notice 44711, issued April 12, 2000 (as already indicated at footnote 2 of the New Ulm Reply Comments); that the FCC was advised of completion of the closing to LaGrange by letter April 12, 2000; that the post-

closing ownership report by LaGrange Broadcasting was filed on August 18, 2000; and the Lagrange biennial ownership report, including ownership of KYKM, was filed by LaGrange Broadcasting Corporation on April 2, 2001. LaGrange has date-stamped copies of all of these documents. The error in the FCC's database has also since been corrected (see attached page from FCC Station Search which correctly lists LaGrange Broadcasting Corporation as licensee of KYKM).

The fact that Crawford actually made such a specious argument based upon nothing more than an obvious error in the FCC's computer database says a lot about the Crawford **"Response"**, and none of it is good. Had Crawford actually had any genuine question on this she could have checked the station's FCC file, and would have undoubtedly found copies of the above filed documents. Instead the record was burdened with this inanity which Crawford found so persuasive that she needed to file it in an additional pleading.

III. Conclusion

Crawford was on notice as to every element of the counterproposal as filed and could have raised her new arguments in her Reply Comments had she cared to do so or thought they had any real merit. She did not and they still do not. There is no basis to grant Crawford's request to file an additional pleading and there is no substance in what she has filed.

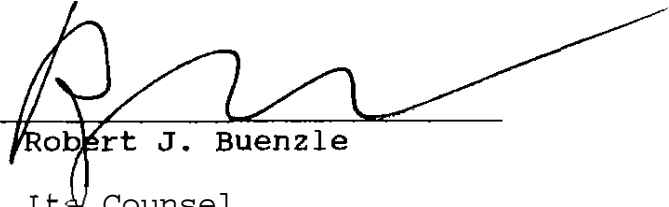
As it is now almost the year 2003, and we have long ago gone to the moon and developed fancy computers for everything, it is unbelievable, if not disgraceful, that a town of almost 3000 persons in Texas has no over-the-air radio service at all; not only no transmission service but also no reception service, none at all. New Ulm seeks to remedy that problem and has submitted the proper plan to do so. The only prejudice that could occur in this proceeding to anyone would be to the public interest if that new white-area service proposed for Schulenburg were ever denied in favor of adding some additional service to the crossroad junction at Smiley.

The Crawford Motion For Leave to File Response has no basis or merit and should be dismissed or denied, and the Crawford "Response" that accompanied that Motion, if considered at all, is similarly without merit and should likewise be dismissed or denied.

Respectfully submitted,

NEW ULM BROADCASTING COMPANY

by



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Its Counsel

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November 29, 2002

[Help](#) | [Home](#)

Search returned: 1 matching station

Station Search Results

Call Sign	Facility Id	Service	Licensee	Status	Details
KYKM	67287	FM	LAGRANGE BROADCASTING CORPORATION	LICENSED	Click for Details

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Opposition to Linda Crawford 'Response' have been served by United States mail, postage prepaid this 29th day of November, 2002, upon the following:

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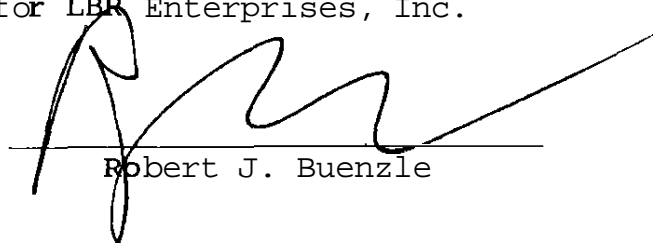
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*Also Served by Fax